

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 438

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO INCOME TAXES; AMENDING SECTION 63-3029B, IDAHO CODE, TO REVISE  
THE INCOME TAX CREDIT FOR CAPITAL INVESTMENT; DECLARING AN EMERGENCY  
AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-3029B, Idaho Code, be, and the same is hereby  
amended to read as follows:

63-3029B. INCOME TAX CREDIT FOR CAPITAL INVESTMENT. (1) At the elec-  
tion of the taxpayer there shall be allowed, subject to the applicable limi-  
tations provided herein as a credit against the income tax imposed by chapter  
30, title 63, Idaho Code, an amount equal to the sum of:

(a) The tax credit carryovers; and

(b) The tax credit for the taxable year.

(2) The maximum allowable amount of the credit for the current taxable  
year shall be three percent (3%) of the amount of qualified investments made  
during the taxable year.

(3) As used in this section "qualified investment" means certain prop-  
erty which:

(a) (i) Is eligible for the federal investment tax credit, as defined  
in sections 46(c) and 48 of the Internal Revenue Code subject to  
the limitations provided for certain regulated companies in sec-  
tion 46(f) of the Internal Revenue Code and is not a motor vehicle  
under eight thousand (8,000) pounds gross weight; or

(ii) Is qualified broadband equipment as defined in section  
63-3029I, Idaho Code; and

(b) Is acquired, constructed, reconstructed, erected or placed into  
service after December 31, 1981; and

(c) Has a situs in Idaho as determined under subsection (9) of this sec-  
tion.

(4) (a) For qualified investments placed in service in 2003 and there-  
after, a taxpayer, other than a person whose rate of charge or rate of  
return, or both, is regulated or limited according to federal or state  
law, may elect, in lieu of the credit provided by this section, a two (2)  
year exemption from all taxes on personal property on the qualified in-  
vestment. The exemption from personal property tax shall apply to the  
year the election is filed as provided in this section and the immedi-  
ately following year. The election provided by this paragraph is avail-  
able only to a taxpayer whose Idaho taxable income, before application  
of net operating losses carried back or forward, in the second preceding  
taxable year in which the investment is placed in service is negative.

(b) The election shall be made in the form prescribed by the state tax  
commission and shall include a specific description and location of

all qualified investments placed into service and located in the jurisdiction of the assessing authority, a designation of the specific assets for which the exemption is claimed, and such other information as the state tax commission may require. The election must be made by including the election form with the listing of personal property required by section 63-302, Idaho Code, or, in the case of operating property assessed under chapter 4, title 63, Idaho Code, with the operator's statement required by section 63-404, Idaho Code. Once made the election is irrevocable. If no election is made, the election is not otherwise available. A copy of the election form must also be attached to the original income tax return due for the taxable year in which the claim was made.

(c) The state tax commission and the various county assessors are authorized to exchange information as necessary to properly coordinate the exemption provided in this subsection. Information disclosed to county officials under this subsection may be used only to determine the validity or amount of a taxpayer's entitlement to the exemption provided in this section, and is not otherwise subject to public disclosure as provided in section 9-340D, Idaho Code.

(d) In the event that an investment in regard to which the election under this subsection was made is determined by the state tax commission:

- (i) To not be a qualified investment, or
- (ii) To have ceased to qualify during the recapture period, or
- (iii) To be otherwise not qualified for the election,

the taxpayer shall be subject to recapture of the property tax benefit.

(e) The benefit to be recaptured in subsection (4) (d) of this section shall be computed in the manner required in subsection (7) of this section and such recapture amount shall be subject to assessment in the same manner as a deficiency in tax under this chapter. For purposes of calculating the recapture, the property tax benefit shall be:

(i) In the case of locally assessed property located in a single county or nonapportioned centrally assessed property, the market value of exempted property times the average property tax levy for that county in the year or years for which the exemption was claimed.

(ii) In the case of other centrally assessed property and property located in more than one (1) county, the market value of exempted property times the average urban property tax levy of the state as determined by the state tax commission in each of the years for which the exemption was claimed.

(f) In the event that a recapture of the exemption is required under this subsection (4), the person claiming the exemption shall report the event to the state tax commission in the manner the state tax commission may by rule require. The report shall be due no later than the due date of that person's income tax return under this chapter for the taxable year in which the event occurs. The recapture amount is due and payable with the report. Any amount of recapture not paid is a deficiency within the meaning of section 63-3044, Idaho Code.

(g) All moneys collected by the state tax commission pursuant to this subsection, which amounts are continuously appropriated for this pur-

pose, shall be deposited with the state treasurer and placed in the state refund account, as provided by section 63-3067, Idaho Code, to be remitted to the county within which the property was located that was not a qualified investment or ceased to qualify during the recapture period. The county shall distribute this remittance to all appropriate taxing districts based on the proportion each appropriate taxing district's levy is to the total of all the levies of the taxing districts for the tax code area where the property was located for each year the exemption was granted. If any taxing district is dissolved or disincorporated, the proportionate share of the remittance to be distributed to that taxing district shall be deposited in the county current expense fund.

(h) For purposes of the limitation provided by section 63-802, Idaho Code, moneys received pursuant to this subsection shall be treated as property tax revenue by taxing districts.

(5) Notwithstanding the provisions of subsections (1) and (2) of this section, the amount of the credit allowed shall not exceed fifty percent (50%) of the tax liability of the taxpayer. The tax liability of the taxpayer shall be the tax after deducting the credit allowed by section 63-3029, Idaho Code.

(6) If the sum of credit carryovers from the credit allowed by subsection (2) of this section and the amount of credit for the taxable year from the credit allowed by subsection (2) of this section exceed the limitation imposed by subsection (5) of this section for the current taxable year, the excess attributable to the current taxable year's credit shall be an investment credit carryover to the fourteen (14) succeeding taxable years so long as the qualified investment property for which the unused credit was granted otherwise remains a qualified investment as determined under subsection (3) of this section in each of the taxable years during the recapture period. In the case of a group of corporations filing a combined report under section 63-3027, Idaho Code, or sections 63-3027B through 63-3027E, Idaho Code, credit earned by one (1) member of the group but not used by that member may be used by another member of the group, subject to the provisions of subsection (5) of this section, instead of carried over. The entire amount of unused credit shall be carried forward to the earliest of the succeeding years, wherein the oldest available unused credit shall be used first, ~~so long as the qualified investment property for which the unused credit was granted still maintains Idaho situs.~~ For a combined group of corporations, credit carried forward may be claimed by any member of the group unless the member who earned the credit is no longer included in the combined group.

(7) Any recapture of the credit allowed by subsection (2) of this section on property disposed of or ceasing to qualify, prior to the close of the recapture period, shall be determined according to the applicable recapture provisions of the Internal Revenue Code. In the case of a unitary group of corporations, the increase in tax due to the recapture of investment tax credit must be reported by the member of the group who earned the credit regardless of which member claimed the credit against tax.

(8) For the purpose of determining whether property placed in service is a "qualified investment" as defined in subsection (3) of this section, the provisions of section 49 of the Internal Revenue Code shall be disregarded.

1 "Qualified investment" shall not include any amount for which a deduction is  
 2 allowed under section 168(k) or section 179 of the Internal Revenue Code in  
 3 computing Idaho taxable income.

4 (9) For purposes of this section, property has a situs in Idaho during a  
 5 taxable year if it is used in Idaho at any time during the taxable year. Prop-  
 6 erty not used in Idaho during a taxable year does not have a situs in Idaho  
 7 in the taxable year during which the property is not used in Idaho or in any  
 8 subsequent taxable year. ~~No credit or carryover of credit is permitted un-~~  
 9 ~~der this section if the credit or carryover relates to property that does not~~  
 10 ~~have a situs in Idaho during the taxable year for which the credit or carry-~~  
 11 ~~over is claimed.~~ The Idaho situs of property must be established by records  
 12 maintained by the taxpayer which are created reasonably contemporaneously  
 13 with the use of the property.

14 (10) In the case of property used both in and outside Idaho, the tax-  
 15 payer, electing to claim the credit provided in this section, must elect to  
 16 compute the qualified investment in property with a situs in Idaho for all  
 17 such investments first qualifying during that year in one (1), but only one  
 18 (1), of the following ways:

19 (a) The amount of each qualified investment in a specific asset shall  
 20 be separately computed based on the percentage of the actual use of the  
 21 property in Idaho by using a measure of the use, such as total miles or  
 22 total machine hours, that most accurately reflects the beneficial use  
 23 during the taxable year in which it is first acquired, constructed,  
 24 reconstructed, erected or placed into service; provided, that the as-  
 25 set is placed in service more than ninety (90) days before the end of  
 26 the taxable year. In the case of assets acquired, constructed, recon-  
 27 structed, erected or placed into service within ninety (90) days prior  
 28 to the end of the taxable year in which the investment first qualifies,  
 29 the measure of the use of that asset within Idaho for that year shall be  
 30 based upon the percentage of use in Idaho during the first ninety (90)  
 31 days of use of the asset;

32 (b) The investment in qualified property used both inside and out-  
 33 side Idaho during the taxable year in which it is first acquired,  
 34 constructed, reconstructed, erected or placed into service shall be  
 35 multiplied by the percent of the investment that would be included in  
 36 the numerator of the Idaho property factor determined pursuant to sec-  
 37 tion 63-3027, Idaho Code, for the same year.

38 (11) References to sections 46, 48 and 49 of the "Internal Revenue Code"  
 39 mean those sections as they existed in the Internal Revenue Code of 1986  
 40 prior to November 5, 1990.

41 SECTION 2. An emergency existing therefor, which emergency is hereby  
 42 declared to exist, this act shall be in full force and effect on and after its  
 43 passage and approval, and retroactively to January 1, 2012.